

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA

§

VS.

§

CRIM NO. 4:16CR157

§

APPEAL NO. 18-40406

§

BRANDON DANIEL

§

MEMORANDUM OPINION AND ORDER

On April 4, 2018, the Judgment was entered. The final day for filing a timely notice of appeal was April 17, 2018. Defendant, *pro se*, filed a notice of appeal on April 23, 2018 . On July 13, 2018, the Fifth Circuit remanded the case for a determination of whether excusable neglect or good cause existed for the untimely filing of the Defendant's notice of appeal.

Rule 4(b)(1) of the Federal Rules of Appellate Procedure affords a criminal defendant fourteen (14) days in which to file a notice of appeal. Pursuant to Rule 4(b)(4) of the Federal Rules of Appellate Procedure, a district court may grant an additional thirty (30) days in which to file a notice of appeal upon a finding of excusable neglect or good cause. Since Defendant filed his notice of appeal within the additional thirty (30) day period, the Fifth Circuit remanded the case to this Court on July 13, 2018, for a determination of whether the untimely filing of the notice of appeal was due to excusable neglect or good cause. This Court subsequently entered an Order on July 16, 2018, directing Defendant to file an affidavit with the Court by August 6, 2018, explaining whether the untimely filing of his notice of appeal was due to excusable neglect or good cause.

In the court's July 16, 2018 order, the court ordered Daniel to file an affidavit with the court within two (2) weeks after receiving the court's prior orders, explaining whether the untimely filing of his notice of appeal was due to excusable neglect or good cause. Although more than two weeks have passed since Daniel received the orders of this court, Daniel has failed to file an affidavit with the court as ordered. Daniel, therefore, has not offered any explanation as to whether the untimely filing of his notice of appeal was due to excusable neglect or good cause. In light of the foregoing, the court finds that Daniel's untimely filing of his notice of appeal was not due to excusable neglect or good cause.

The Clerk is **ORDERED** to forward a copy of this memorandum to the Court of Appeals and to the parties in this lawsuit.

SIGNED this 15th day of August, 2018.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE